

1 **INTERNAL REPORTS CHECKED:** RAD Reports
2 Disclosure reports
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4 **FEDERAL AGENCIES CHECKED:** None
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7 **I. INTRODUCTION**

8 These matters arise from internally-generated referrals of the American Federation of
9 Teachers, AFL-CIO, Committee on Political Education and Loretta Johnson in her official
10 capacity as treasurer (“the Committee” or “AFT-COPE”) for activity during the 2018
11 election cycles.
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16 In RR 18L-15, RAD
17 referred the Committee to OGC for failing to disclose \$114,750.68 in receipts on the
18 Committee’s 2017 30-Day Post-Special Report.³

19 The Responses in matters acknowledge that the Committee failed to timely report its
20 receipts and disbursements but contend that the Commission should take no further action in
21 RR 18L-15 based on a number of mitigating factors described below.

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³ See RR 18L-15 at 1 (Mar. 20, 2018) (“RAD Referral”).

1 Because we conclude that the Responses inadequately rebut the fact that the Committee failed to
2 timely report its activities, we recommend that the Commission find reason to believe that the
3 Committee violated 52 U.S.C. § 30104(b)(2) and (4) by failing to timely report its receipts and
4 disbursements and authorize pre-probable cause conciliation.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. 2016 Election Cycle Activity**

7 1. Facts

8 The Committee is the separate segregated fund of the American Federation of Teachers,
9 AFL-CIO ("AFT").⁴ In RAD noted various apparent violations related to the
10 Committee's 2016 filings.⁵ Two of the apparent violations met the standards for referral to
11 OGC; three met the standard for referral to ADRO; and the remaining violations did not meet
12 either referral standard.⁶ The following apparent violations met the standard for referral to OGC:

- 13 • The Committee failed to report \$370,087.24 in receipts on its 2016 12-Day Pre-General
14 Report.⁷
- 15 • The Committee failed to report \$364,479.31 in receipts on its 2016 30-Day Post-General
16 Report.⁸

17 The following apparent violations met the standard for referral to ADRO:

4 ⁴ See AFT-COPE Amended Statement of Organization (Feb. 13, 2018).

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7 ⁷ Compare AFT-COPE 2016 12-Day Pre-General Report (filed Oct. 27, 2016) (disclosing \$7,890.75 in receipts), with AFT-COPE 2016 Amended 12-Day Pre-General Report (filed Jan. 31, 2017) (disclosing \$377,977.99 in receipts).

8 ⁸ Compare AFT-COPE 2016 30-Day Post-General Report (filed Dec. 8, 2016) (disclosing \$67,878.32 in receipts), with AFT-COPE 2016 Amended 30-Day Post-General Report (filed Jan. 31, 2017) (disclosing \$432,357.63 in receipts).

- 1 • The Committee failed to report \$128,500 in disbursements on its 2016 September
2 Monthly Report.⁹
- 3 • The Committee failed to report \$103,307.79 in disbursements on its 2016 12-Day Pre-
4 General Report.¹⁰
- 5 • The Committee failed to report \$105,000 in disbursements on its 2016 30-Day Post-
6 General Report.¹¹

7 2. Legal Analysis

8 The Act requires committee treasurers to file reports of receipts and disbursements in
9 accordance with the provisions of 52 U.S.C. § 30104.¹² These reports must include, *inter alia*,
10 the amount and nature of these receipts and disbursements.¹³

11 Here, the available information indicates that the Committee failed to disclose
12 \$1,071,374.34 in total activity on its original 2016 September Monthly, 2016 12-Day Pre-
13 General, and 2016 30-Day Post-General reports. The Committee subsequently disclosed the
14 activity on amended reports.¹⁴

15 While not disputing the reporting errors, the Committee contends that the Commission
16 should not take further action given several mitigating circumstances. For example, the

⁹ Compare AFT-COPE 2016 September Monthly Report (filed Sep. 20, 2016) (disclosing \$248,500 in disbursements), with AFT-COPE 2016 Amended 2016 September Monthly Report (filed Jan. 8, 2017) (disclosing \$377,000 in disbursements).

¹⁰ Compare AFT-COPE 2016 12-Day Pre-General Report (filed Oct. 27, 2016) (disclosing \$780,007.60 in disbursements), with AFT-COPE 2016 Amended 12-Day Pre-General Report (filed Jan. 31, 2017) (disclosing \$883,315.39 in disbursements).

¹¹ Compare AFT-COPE 2016 30-Day Post-General Report (filed Dec. 8, 2016) (disclosing \$652,880.65 in disbursements), with AFT-COPE 2016 Amended 30-Day Post-General Report (filed Jan. 31, 2017) (disclosing \$757,880.65 in disbursements).

¹² See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹³ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

¹⁴ The amended 2016 September Monthly Report revealed \$128,500 in additional disbursements activity. The Amended 12-Day Pre-General Report revealed \$473,395.03 in total increased activity. *Id.* The Amended 30-Day Post-General Report revealed \$469,479.31 in total increased activity. *Id.*

1 Committee states that several key staff members left between August and October 2016 because
2 of unforeseen retirements, resignations, and medical leaves of absence, and that their
3 replacements were not adequately trained.¹⁵ The Committee also states that it has taken specific
4 corrective actions to improve the oversight, accuracy, and completeness of the Committee's
5 future reporting and asserts that it demonstrated "best efforts" to comply with the Act.¹⁶

6 In addition, with respect to the late reporting of receipts totaling \$370,087 and \$364,479,
7 the Committee argues that the delayed disclosures did not harm the public interest.¹⁷ The
8 Committee asserts that it had sufficient cash-on-hand of over \$8 million at the beginning of the
9 reporting periods to make its disbursements and did not have to draw on those deposits to make
10 its disbursements during the relevant reporting periods.¹⁸

11 Section 30102(i) of the Act provides that a committee's reports are considered to be in
12 compliance with the Act when the committee's treasurer shows that "best efforts" were used to
13 obtain, maintain, and submit information required by the Act.¹⁹ Under the Commission's *Policy*
14 *Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by*
15 *the Federal Election Campaign Act*, the Commission determined that it would generally
16 conclude that a committee exercised best efforts if the committee established, *inter alia*, that it
17 had taken certain affirmative steps to maintain adequate records and make accurate reports, such
18 as "training staff responsible for obtaining, maintaining, and submitting campaign finance
19 information in the requirements of the Act" and taking prompt remedial action upon discovery of

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16 *Id.* at 2-3 (citing 52 U.S.C. § 30102(i)).

17 *Id.* at 4-5.

18 *Id.*

19 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7.

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1 the committee's failure to properly file its reports.²⁰ In contrast, the policy statement states that
2 the Commission will generally conclude that a committee has not met the best efforts standard if
3 the committee's failure to obtain, maintain, or submit the required information or report is due to,
4 *inter alia*, the unavailability, inexperience, illness, negligence, or error of committee staff.²¹

5 Based on the Commission's guidance, the Committee fails to establish that it exercised
6 best efforts. Although the Committee took prompt corrective actions when it discovered the
7 various reporting failures,²² the Committee admits that the reporting errors were caused by
8 inexperienced, inadequately trained committee staff members — circumstances that the policy
9 statement specifically lists as generally insufficient to support a best efforts defense.

10 Further, whether the Committee had excess cash on hand to make its disbursements
11 during the reporting period does not relieve it of its duty to accurately and timely disclose all of
12 the relevant receipts and disbursements. Here, the Committee failed to timely disclose almost \$1
13 million in receipts and disbursements on its 2016 Pre-General and 30-Day Post General Reports,
14 and the public was deprived of critical information regarding the Committee's activities until
15 months after the 2016 elections.

²⁰ 72 Fed. Reg. 31,438, 31,440 (Jun. 7, 2007). The Commission also generally requires the committee to show that: (1) at the time of its failure, the committee took relevant precautions such as double checking recordkeeping entries, regular reconciliation of committee records with bank statements, and regular backup of all electronic files; (2) the failure was a result of reasonably unforeseen circumstances beyond the control of the committee, such as a failure of Commission computers or Commission-provided software; severe weather or other disaster-related incidents; a widespread disruption of information transmission over the Internet not caused by any failure of the committee's computer systems or Internet service provider; or delivery failures caused by mail/courier services such as U.S. Postal Service or Federal Express. *Id.*

²¹ *Id.* The Commission has previously rejected similar best efforts claims where respondents identified staff error, rather than some unforeseen circumstances, as the cause of respondents' reporting failures. *See, e.g.,* RR 12L-82 (Ron Paul 2012 Presidential Campaign Committee) (finding reason to believe that respondents failed to report a \$500,000 contribution and rejecting a best efforts defense which did not point to any unforeseen circumstances and relied in part on a claim that committee staff misunderstood the relevant reporting requirement).

²² *See* MUR 6508 (Republican National Committee), Factual and Legal Analysis 5-6 (rejecting the application of the best efforts defense where the respondent took remedial action but did not show that it employed trained staff or that reporting failures were result of unforeseen circumstances).

1 Under these circumstances, we recommend that the Commission find reason to believe
2 that the Committee violated 52 U.S.C. § 30104(b)(2) and (4) by failing to report \$1,071,374.34
3 in receipts and disbursements on its original 2016 September Monthly, 2016 12-Day Pre-
4 General, and 2016 30-Day Post-General Reports.

5 **B. 2018 Election Cycle Activity**

6 1. Facts

7 In RR 18L-55, RAD referred the Committee for failing to timely disclose \$114,750.68 on
8 its 2017 30-Day Post-Special Report.²³ On May 11, 2017, the Committee submitted its 2017
9 30-Day Post-Special Report, disclosing \$1,247,608.54 in unitemized contributions from
10 individuals on Line 11(a)(ii).²⁴ On June 10, 2017, the Committee filed two Amended 2017 30-
11 Day Post-Special Reports.²⁵ The first amended report disclosed no change in receipts from the
12 original report; the second amended report disclosed \$1,362,359.22 in receipts on Line 11(a)(ii),
13 an increase of \$114,750.68 from the original report.²⁶

14 According to the Response, the increased activity consisted of contributions made via
15 employer-administered payroll deductions from AFT members in various local affiliate
16 organizations received and forwarded to AFT-COPE by various collecting agents.²⁷ These
17 receipts included \$54,138 transferred to the Committee in three transactions on April 26 and 28,
18 2017, and \$60,612 transferred to the Committee earlier that month.²⁸ Although the Committee

²³ RAD Referral at 1.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.* at 2-3.

²⁷ RR 18L-15 Resp. at 2-3 ("RAD Referral Resp.").

²⁸ *Id.* at 2-4.

1 received these transfers, they were not recorded in the Committee's accounting system, which
2 caused them to be omitted from the Committee's original 2017 30-Day Post-Special Report.²⁹

3 2. Legal Analysis

4 The Committee failed to disclose \$114,750.68 in receipts on its original 2017 30-Day
5 Post-Special Report as required by 52 U.S.C. § 30104(b)(2). The Committee does not deny
6 failing to report the activity on its original report and admits that \$60,612 of the alleged amount
7 in violation was required to have been included.³⁰ It argues, however, that \$54,138 of the
8 apparent amount in violation should not be considered because the Committee could have chosen
9 to delay depositing the contributions for up to 10 days under 11 C.F.R. § 103.3(a)³¹ and then
10 disclosed them on the Committee's next regular report.³² The Committee contends that had the
11 Committee availed itself of this 10-day delay, \$54,138.68 of the additional receipts — received
12 in three transactions on April 26 and 28 — could have been deposited on or after May 2 and
13 included on the Committee's next scheduled report — a 2017 Pre-Run-Off Report due on June 8,
14 2017.³³ Thus, they argue, because the Committee *could have* delayed depositing the transfers, its
15 failure to timely report the additional receipts of \$54,138 on the 2017 30-Day Post-Special
16 Report does not violate the Act.³⁴

²⁹ See RAD Referral Resp. at 2; Committee's Third Amended 2017 30-Day Post-Special Report at 3 (filed Sep. 14, 2017) (including a memo entry responding to a Request for Additional Information sent by the Commission on Aug. 10, 2017, stating: "In response to the letter we received referenced 'AMENDED 30-DAY POST-GENERAL REPORT (2/01/2016 -5/1/2017), RECEIVED 08/10/2017', \$114,750.68 of unitemized contributions were not recorded in our accounting system. Therefore the items were not reported in our initial filing. As soon as we became aware of the items we uploaded the amended report").

³⁰ *Id.* at 4.

³¹ This regulation requires political committee treasurers to either deposit or return all receipts within 10 days of receipt.

³² RAD Referral Resp. at 2.

³³ *Id.*

³⁴ *Id.*

1 This argument is unpersuasive. Although the Committee could have used the full 10
2 days to review and deposit the relevant contributions under section 103.3(a), the Committee did
3 not do so, and in fact deposited the entire \$114,750.68 during the reporting period at issue.³⁵
4 Therefore, unless the Committee availed itself of the option to return the contributions during the
5 10 day period prescribed in 11 C.F.R. § 103.3(a), which they did not, they were obligated to
6 report them on their original 2017 30-Day Post-Special Report.

7 Accordingly, we recommend that the Commission find reason to believe that the
8 Committee violated 52 U.S.C. § 30104(b)(2) by failing to report \$114,750.68 in receipts on its
9 2017 30-Day Post-Special Report.

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³⁵ The Committee does not assert that the funds were not deposited into the Committee's account, but rather that that the funds "were not recorded in [the Committee's] accounting system." *See supra* note 29.

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IV. RECOMMENDATIONS

1. Open a MUR in
2. Merge RR 18L-15 into the MUR;
3. Find reason to believe that American Federation of Teachers, AFL-CIO Committee on Political Education and Loretta Johnson in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(2) and (4);
4. Approve the attached Factual and Legal Analysis;
5. Authorize pre-probable cause conciliation with American Federation of Teachers, AFL-CIO Committee on Political Education and Loretta Johnson in her official capacity as treasurer;
6. Approve the attached proposed conciliation agreement; and

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7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

7/3/18
Date


Stephen Gura
Deputy Associate General Counsel


Jim Lee
Acting Assistant General Counsel


Ray L. Wolcott
Attorney

Attachments:
1. Factual & Legal Analysis

10004440001

1 Committee violated 52 U.S.C. § 30104(b)(2) and (4) by failing to timely report its receipts and
2 disbursements.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. 2016 Election Cycle Activity**

5 1. Facts

6 The Committee is the separate segregated fund of the American Federation of Teachers,
7 AFL-CIO (“AFT”).⁴ In RAD noted the following apparent violations related to the
8 Committee’s 2016 filings:⁵

- 9 • The Committee failed to report \$370,087.24 in receipts on its 2016 12-Day Pre-General
10 Report.⁶
- 11 • The Committee failed to report \$364,479.31 in receipts on its 2016 30-Day Post-General
12 Report.⁷
- 13 • The Committee failed to report \$128,500 in disbursements on its 2016 September
14 Monthly Report.⁸
- 15 • The Committee failed to report \$103,307.79 in disbursements on its 2016 12-Day Pre-
16 General Report.⁹

4 See AFT-COPE Amended Statement of Organization (Feb. 13, 2018).

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- 1 • The Committee failed to report \$105,000 in disbursements on its 2016 30-Day Post-
2 General Report.¹⁰

3 2. Legal Analysis

4 The Act requires committee treasurers to file reports of receipts and disbursements in
5 accordance with the provisions of 52 U.S.C. § 30104.¹¹ These reports must include, *inter alia*,
6 the amount and nature of these receipts and disbursements.¹²

7 Here, the available information indicates that the Committee failed to disclose
8 \$1,071,374.34 in total activity on its original 2016 September Monthly, 2016 12-Day Pre-
9 General, and 2016 30-Day Post-General reports. The Committee subsequently disclosed the
10 activity on amended reports.¹³

11 While not disputing the reporting errors, the Committee contends that the Commission
12 should not take further action given several mitigating circumstances. For example, the
13 Committee states that several key staff members left between August and October 2016 because
14 of unforeseen retirements, resignations, and medical leaves of absence, and that their
15 replacements were not adequately trained.¹⁴ The Committee also states that it has taken specific

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1 corrective actions to improve the oversight, accuracy, and completeness of the Committee's
2 future reporting and asserts that it demonstrated "best efforts" to comply with the Act.¹⁵

3 In addition, with respect to the late reporting of receipts totaling \$370,087 and \$364,479,
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6 reporting periods to make its disbursements and did not have to draw on those deposits to make
7 its disbursements during the relevant reporting periods.¹⁷

8 Section 30102(i) of the Act provides that a committee's reports are considered to be in
9 compliance with the Act when the committee's treasurer shows that "best efforts" were used to
10 obtain, maintain, and submit information required by the Act.¹⁸ Under the Commission's *Policy*
11 *Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by*
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13 conclude that a committee exercised best efforts if the committee established, *inter alia*, that it
14 had taken certain affirmative steps to maintain adequate records and make accurate reports, such
15 as "training staff responsible for obtaining, maintaining, and submitting campaign finance
16 information in the requirements of the Act" and taking prompt remedial action upon discovery of
17 the committee's failure to properly file its reports.¹⁹ In contrast, the policy statement states that

¹⁵ *Id.* at 2-3 (citing 52 U.S.C. § 30102(i)).

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3 *inter alia*, the unavailability, inexperience, illness, negligence, or error of committee staff.²⁰

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6 various reporting failures,²¹ the Committee admits that the reporting errors were caused by
7 inexperienced, inadequately trained committee staff members — circumstances that the policy
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11 the relevant receipts and disbursements. Here, the Committee failed to timely disclose almost \$1
12 million in receipts and disbursements on its 2016 Pre-General and 30-Day Post General Reports,
13 and the public was deprived of critical information regarding the Committee's activities until
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15 Under these circumstances, the Commission finds reason to believe that the Committee
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failure of the committee's computer systems or Internet service provider; or delivery failures caused by mail/courier services such as U.S. Postal Service or Federal Express. *Id.*

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3 **B. 2018 Election Cycle Activity**

4 1. Facts

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22 RAD Referral at 1.

23 *Id.* at 2.

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25 *Id.* at 2-3.

26 RR 18L-15 Resp. at 2-3 (“RAD Referral Resp.”).

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1 received these transfers, they were not recorded in the Committee's accounting system, which
2 caused them to be omitted from the Committee's original 2017 30-Day Post-Special Report.²⁸

3 2. Legal Analysis

4 The Committee failed to disclose \$114,750.68 in receipts on its original 2017 30-Day
5 Post-Special Report as required by 52 U.S.C. § 30104(b)(2). The Committee does not deny
6 failing to report the activity on its original report and admits that \$60,612 of the alleged amount
7 in violation was required to have been included.²⁹ It argues, however, that \$54,138 of the
8 apparent amount in violation should not be considered because the Committee could have chosen
9 to delay depositing the contributions for up to 10 days under 11 C.F.R. § 103.3(a)³⁰ and then
10 disclosed them on the Committee's next regular report.³¹ The Committee contends that had the
11 Committee availed itself of this 10-day delay, \$54,138.68 of the additional receipts — received
12 in three transactions on April 26 and 28 — could have been deposited on or after May 2 and
13 included on the Committee's next scheduled report — a 2017 Pre-Run-Off Report due on June 8,
14 2017.³² Thus, they argue, because the Committee *could have* delayed depositing the transfers, its

²⁸ See RAD Referral Resp. at 2; Committee's Third Amended 2017 30-Day Post-Special Report at 3 (filed Sep. 14, 2017) (including a memo entry responding to a Request for Additional Information sent by the Commission on Aug. 10, 2017, stating: "In response to the letter we received referenced 'AMENDED 30-DAY POST-GENERAL REPORT (2/01/2016 -5/1/2017), RECEIVED 08/10/2017', \$114,750.68 of unitemized contributions were not recorded in our accounting system. Therefore the items were not reported in our initial filing. As soon as we became aware of the items we uploaded the amended report").

²⁹ *Id.* at 4.

³⁰ This regulation requires political committee treasurers to either deposit or return all receipts within 10 days of receipt.

³¹ RAD Referral Resp. at 2.

³² *Id.*

1 failure to timely report the additional receipts of \$54,138 on the 2017 30-Day Post-Special

2 Report does not violate the Act.³³

3 This argument is unpersuasive. Although the Committee could have used the full 10

4 days to review and deposit the relevant contributions under section 103.3(a), the Committee did

5 not do so, and in fact deposited the entire \$114,750.68 during the reporting period at issue.³⁴

6 Therefore, unless the Committee availed itself of the option to return the contributions during the

7 10 day period prescribed in 11 C.F.R. § 103.3(a), which they did not, they were obligated to

8 report them on their original 2017 30-Day Post-Special Report.

9 Accordingly, the Commission finds reason to believe that the Committee violated 52

10 U.S.C. § 30104(b)(2) by failing to report \$114,750.68 in receipts on its 2017 30-Day Post-

11 Special Report.

³³ *Id.*

³⁴ The Committee does not assert that the funds were not deposited into the Committee's account, but rather that the funds "were not recorded in [the Committee's] accounting system." *See supra* note 28.